

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Pat Shortridge,

Complainant,

vs.

ORDER OF DISMISSAL

DLCC and the DFL
Party of Minnesota,

Respondent .

This matter came on for a probable cause hearing under Minn. Stat. § 211B.34, before Administrative Law Judge Bruce H. Johnson on November 13 and 27, 2012, to consider a complaint filed by Pat Shortridge on November 1, 2012. The probable cause hearing was conducted by telephone conference call on November 13 and 27, 2012. The record closed later on November 30, 2012, when the parties post-hearing submissions were received.

Richard G. Morgan, Attorney at Law, appeared on behalf of Pat Shortridge ("Complainant"). Brian G. Svoboda, Attorney at law, appeared on behalf of the DLCC, and Charles N. Nauen, Attorney at Law, appeared on behalf of the DFL Party of Minnesota ("DFL Party") (collectively "Respondents").

Based on the record and all of the proceedings in this matter, including the Memorandum incorporated herein,

IT IS ORDERED,

(1) That the Complainant's motion to Amend his Complaint to allege a violation of Minn. Stat. § 211A.13, subd. 2, by the DFL Party and to restore the DFL Party as a respondent is DENIED; and

(2) That there is not probable cause to believe that Respondent violated Minn. Stat. 211B.15, as alleged in the Complaint, and this matter is accordingly DISMISSED.

Dated: December 5, 2012

s/Bruce H. Johnson
BRUCE H. JOHNSON
Administrative Law Judge

Digitally recorded; no transcript prepared

NOTICE OF RECONSIDERATION AND APPEAL RIGHTS

Minnesota Statutes § 211B.34, subdivision 3, provides that the Complainant has the right to seek reconsideration of this decision on the record by the Chief Administrative Law Judge. A petition for reconsideration must be filed with the Office of Administrative Hearings within two business days after this dismissal.

If the Chief Administrative Law Judge determines that the assigned Administrative Law Judge made a clear error of law and grants the petition, the Chief Administrative Law Judge will schedule the complaint for an evidentiary hearing under Minnesota Statutes § 211B.35 within five business days after granting the petition.

If the Complainant does not seek reconsideration, or if the Chief Administrative Law Judge denies a petition for reconsideration, then this order is the final decision in this matter under Minn. Stat. § 211B.36, subd. 5, and a party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63 to 14.69.

MEMORANDUM

Factual Background

The material facts are not genuinely in dispute.

The Democratic Legislative Campaign Committee began its existence in 1994 as a nonprofit corporation (“DLCC Nonprofit”), organized under the District of Columbia’s Business Corporation’s Code. It was created to benefit Democratic legislators in the several states. Those legislators, including some in Minnesota, have served as the DLCC Nonprofit’s directors, officers and members. Federal law does not prohibit corporations from making political contributions. Therefore, one of the DLCC Nonprofit’s original operational functions was to receive both corporate and individual campaign contributions and redistribute them to Democratic candidates for office and state Democratic party organizations.

However, some states, including Minnesota, have statutes that could be construed as prohibiting political committees that are incorporated from making contributions to state political parties and candidates. Because of that concern, the Directors of the DLCC Nonprofit authorized the creation of a companion unincorporated association (“DLCC Association”) in 2004. The DLCC Association’s purpose and function was to receive political contributions from individual, non-corporate donors and to pass those contributions on to candidates and party organizations in states where contributions from the DLCC Nonprofit may arguably be prohibited.

Both the DLCC Nonprofit and the DLCC Association are registered with the Secretary of the Treasury as “political organizations,” pursuant to 26 U.S.C. § 527. They are therefore both required to file periodic reports with the Internal Revenue Service disclosing their contributions and expenditures. Rather than reporting separately, the two organizations have been making those disclosures in single,

combined filings. The DLCC Nonprofit and the DLCC Association are also closely associated in other ways. They appear to have common membership—that is, Democratic state legislators. Several current directors of the DLCC Nonprofit are Democratic members of the Minnesota Legislature. Moreover, although the DLCC Association and the DLCC Nonprofit maintain separate bank accounts and do not commingle their funds, the evidence suggests that they may share some financial administration and accounting services. On the other hand, a major difference between the two organizations is that they do not share donated funds. The DLCC Nonprofit accepts corporate, treasury, and PAC contributions for deposit in its bank account, while the DLCC Association does not; it only accepts contributions from private individuals for deposit in its bank account. The DLCC Association does not accept or receive contributions from any corporations, whether nonprofit or for-profit.¹

On September 25, 2012, the DLCC Association contributed \$150,000 to the DFL Party, and on October 12, 2012, it contributed another \$200,000 to the DFL Party. Both contributions were made from the DLCC Association’s “Unincorporated Individual Nonfederal Individual #1” bank account. All of the funds in that bank account consisted of contributions received from private individuals. There is no evidence that any contributions have been made to the DFL Party originated from corporate donors or came from bank accounts maintained by the DLCC Nonprofit.

Procedural Background

The Complaint alleged that the DLCC made corporate contributions to the DFL Party in violation of Minn. Stat. § 211A.15, subd. 2. It also alleged that the DFL Party knowingly accepted corporate contributions from the DLCC in violation of Minn. Stat. § 211A.13, subd. 2.

On November 7, 2012, the Administrative Law Judge issued an Order determining that the Complainant had not set forth sufficient facts in the Complaint to indicate that the DFL Party had violated § 211A.13, subd. 2, and that charge was dismissed. However, the Administrative Law Judge determined that the Complaint did set forth sufficient facts to indicate that the DLCC may have violated Minn. Stat. § 211A.15, subd. 2. A probable cause hearing was therefore scheduled to determine whether there was sufficient evidence of the alleged violations requiring resolution at an evidentiary hearing.

The probable cause hearing was convened on November 13, 2012, during which the Administrative Law Judge determined that there had not been sufficient time to enable counsel for the DLCC to prepare a defense. With agreement of all of the parties, the hearing was adjourned, to be reconvened on November 27, 2012. Before adjournment, the Complainant moved for leave to amend his Complaint to plead sufficient facts to establish a *prima facie* claim against the DFL Party under Minn. Stat.

¹ The Complainant assumes that the directors of the DLCC Nonprofit decide whether contributions received by private individuals are deposit in the DLCC Nonprofit’s bank account or the DLCC Association’s bank account. However, the evidence adduced for the hearing did not describe or suggest how those decisions are made.

§ 211A.13, subd. 2, and to join the DFL Party as a respondent. The Administrative Law Judge took that motion under advisement.

Contentions of the Parties

The Complainant relies on language in Minn. Stat. § 211B.15, subd. 2, that prohibits corporations from making *indirect* contributions to major political parties:

Subd. 2. **Prohibited contributions.** A corporation may not make a contribution or offer or agree to make a contribution directly or *indirectly*, of any money, property, free service of its officers, employees, or members, or thing of monetary value to a major political party . . . [Emphasis supplied.]

The Complainant contends that the relationship between the DLCC Association and the DLCC Nonprofit is so close that the DLCC Association is an *alter ego* or mere instrumentality of the DLCC Nonprofit. The Complainant therefore asserts that the contributions that the DLCC Association made to the DFL Party must be considered and treated as *indirect contributions* of the DLCC to a major political party in violation of Minn. Stat. § 211B.15, subd. 2. Put another way, the Complainant argues that although the original donors of the contributions that were ultimately received by the DFL Party were all private individuals, and not corporations, the close relationship between the DLCC Association and the DLCC Nonprofit converted those contributions into corporate contributions.

The Respondent also relies on the language of Minn. Stat. § 211B.15, subd. 2. It argues that the statute expressly applies only to corporations and therefore cannot apply to contributions from an unincorporated association. The DLCC asserts that because the DLCC Association was properly created as an unincorporated association under the laws of the District of Columbia, those original donations by private individuals did not lose their private character when they were passed through the DLCC Association to the DFL Party.

Analysis

Whether there is probable cause to believe that the DLCC violated Minn. Stat. § 211B.15, subd. 2, turns on the language of that statute. A cardinal principle of statutory interpretation is that:

When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit.²

In other words, "if the words of the statute are 'clear and free from all ambiguity,' further construction is neither necessary nor permitted."³ The Respondent argues that the term

² Minn. Stat. § 645.16.

³ *Owens v. Water Gremlin Co.*, 605 N.W.2d 733, 736; (Minn. 2000).

“corporation” is clear and free from all ambiguity, and that there is no sense of the term that includes an unincorporated association. The Rule of Lenity also appear to support the Respondent’s textual approach to interpreting Minn. Stat. § 211B.15. That rule provides that laws whose purpose is to punish (usually by fine or imprisonment) must be construed strictly.⁴ The reasoning behind the rule is the principle of fair notice—that is, the state should not impose penalties upon people without clearly warning them about conduct that is considered unlawful and its consequences. Violations of Minn. Stat. § 211B.15 can result in criminal prosecutions and the imposition of criminal fines.⁵

Nonetheless, the Administrative Law Judge agrees that the reference to indirect contributions in Minn. Stat. § 211B.15, subd. 2, creates a latent ambiguity because whether or not an indirect contribution is permissible is dependent on the context of a particular case. For example, payment by a corporation of the indebtedness of a candidate or committee could be an impermissible indirect contribution. On the other hand, passing an “insignificant” contribution from a labor union might not be an impermissible indirect contribution.⁶ When a statute is ambiguous with regard to a particular application, one must determine the legislature’s intent. Minn. Stat. § 645.16 lists some of the factors that are germane to ascertaining legislative intent:

- (1) the occasion and necessity for the law;
- (2) the circumstances under which it was enacted;
- (3) the mischief to be remedied;
- (4) the object to be attained;
- (5) the former law, if any, including other laws upon the same or similar subjects;
- (6) the consequences of a particular interpretation;
- (7) the contemporaneous legislative history; and
- (8) legislative and administrative interpretations of the statute.

Notable in this case is the object to be remedied. The Complainant argues that the object to be remedied is preventing corporations from circumventing a strict prohibition of any kind of corporate contribution by “establishing shell entities through which to direct political contributions.”⁷ However, other language in Minn. Stat. § 211B.15 clearly indicates that the Complainant’s characterization of the mischief to be remedied is broader than what the legislature intended. Minn. Stat. § 211B.15, subds. 15, creates a safe harbor for certain types of corporations to make direct or indirect political contributions:

Subd. 15. **Nonprofit corporation exemption.** The prohibitions in this section do not apply to a nonprofit corporation that:

⁴ See, e.g., *In re the Welfare of C.R.M., child*, 611 N.W.2d 802, 805 (Minn. 2000).

⁵ Minn. Stat. § 211B.15, subds. 6, 7, and 14.

⁶ See Minn. Stat. § 211B.15, subd. 15.

⁷ Pat Shortridge’s Supplemental Memorandum in Opposition to Dismissal of the Complaint at 1.

- (1) is not organized or operating for the principal purpose of conducting a business;
- (2) has no shareholders or other persons affiliated so as to have a claim on its assets or earnings; and
- (3) was not established by a business corporation or a labor union and has a policy not to accept significant contributions from those entities.

In other words, contributions from nonprofit corporations that meet parts (1) and (2) of the test do not violate Minn. Stat. § 211B.15, subd. 2, even if those contributions may include “insignificant” amounts of contributions originating from corporate and labor union donors. The legislature’s objective in enacting Minn. Stat. § 211B.15 was not therefore to rigidly prevent *any* corporate contributions from reaching a political party or candidate. For example, Minn. Stat. § 211B.15, subd. 15, allows eligible nonprofit corporations to pass through to candidates and political organizations *insignificant amounts* of contributions received from business corporations and labor unions. Rather, the “mischief to be remedied” was to prevent *significant* laundering of corporate political contributions to Minnesota political parties and candidates through the use of associated entities.

Finally, if one were to accept the Complainant’s position that DLCC Nonprofit and DLCC Association must be treated as a single inseparable corporate entity, then DLCC Nonprofit meets the safe harbor test in Minn. Stat. § 211B.15, subd. 15. First, it was not organized or operating for the principal purpose of conducting a business. Second, it has no shareholders or other persons affiliated to have a claim on its assets or earnings. Third, its combined financial structure effectively prevents *any* contributions from corporate donors from being passed through to Minnesota political parties, organizations, committees, or individual seeking to promote or defeat the candidacy of an individual for nomination, election, or appointment to a political office. In other words, its financial structure creates assurances that go beyond the “policy” required by Minn. Stat. § 211B.15, subd. 15(3).

Thus, if the DLCC Nonprofit and DLCC Association are regarded as separate legal entities, no violation of Minn. Stat. § 211B.15 has occurred because the contributions in question were made by an unincorporated association and not a corporation. On the other hand, if the DLCC Association is regarded the *alter ego* of, and inseparable from, the DLCC Nonprofit, then no violation has also occurred because the combined entity meets the safe harbor test in Minn. Stat. § 211B.15, subd. 15.

Because the Administrative Law Judge has concluded that the DLCC has not violated Minn. Stat. § 211B.15, there is no basis for a claim that the DFL Party has violated Minn. Stat. § 211B.13, subd. 2, by knowingly accepting corporate political contributions. The Complainant’s motion to amend the Complaint must therefore be denied.

Conclusion

As discussed above, the Administrative Law Judge concludes that there is no probable cause to believe that the violations of Minn. Stat. Ch. 211B alleged in the complaint have occurred. There is no basis for a claim against the DFL Party. Accordingly, the Complainant's motion to amend the Complaint must be denied, and this matter must be dismissed.

B. H. J.